

ESTTA Tracking number: **ESTTA557133**

Filing date: **08/30/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055426
Party	Plaintiff Run It Consulting, LLC
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY PLLC 344 MAPLE AVENUE WEST , SUITE 151 VIENNA, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com
Submission	Plaintiff's Notice of Taking Testimony
Filer's Name	Matthew Swyers
Filer's e-mail	mswyers@TheTrademarkCompany.com
Signature	/Matthew H. Swyers/
Date	08/30/2013
Attachments	Notice Filing Certified Transcript - Markus Trillsch.pdf(137734 bytes) Certified Transcript of Markus Trillsch - March 7, 2013 - Exhibits.pdf(941729 bytes) Certified Transcript of Markus Trillsch - March 7, 2013.pdf(2086485 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 1,962,898,
For the mark AMERICAN MUSCLE,
Registered on the Principal Register on March 19, 1996.

Run It Consulting, LLC,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92055426
	:	
Augusto Lodi,	:	
	:	
Registrant.	:	

NOTICE OF FILING CERTIFIED TRANSCRIPT – MARKUS TRILLSCH

COMES NOW Petitioner Run It Consulting, LLC, and pursuant to 37. C.F.R. § 2.123(F) and TBMP § 703.01(k), hereby provides notice of the filing of the certified transcript of Markus Trillsch's trial testimony with exhibits with the Board taken on or about March 7, 2013.

A copy of the certified transcript, exhibits, along with Mr. Trillsch's certification have been filed with the Board via its electronic filing system. As required by the rules, a copy of this notice along with a copy of the transcript and exhibits was previously forwarded to all counsel of record.

Respectfully submitted this 30th day of August, 2013.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/
Matthew H. Swyers, Esq.
344 Maple Avenue West, Suite 151
Vienna, VA 22180
Tel. (800) 906-8626
Facsimile (270) 477-4574
mswyers@TheTrademarkCompany.com
Counsel for Applicant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 1,962,898,
For the mark AMERICAN MUSCLE,
Registered on the Principal Register on March 19, 1996.

Run It Consulting, LLC,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92055426
	:	
Augusto Lodi,	:	
	:	
Registrant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing pleading this 30th day of
August, 2013, to be served, via first class mail, postage prepaid as well as email, upon:

Michael DiNardo, Esq.
Kelley & Kelley LLP
6320 Canoga Avenue, Suite 1650
Woodland Hills, CA 91367

/Matthew H. Swyers/
Matthew H. Swyers

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of U.S. Registration 1,962,898,
For the mark AMERICAN MUSCLE,
Registered on the Principal Register on March 19, 1996.

Run It Consulting, LLC,

Petitioner,

vs.

Augusto Lodi,

Registrant.

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:
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Cancellation No. 92055426

NOTICE OF TRIAL DEPOSITION

COMES NOW Petitioner, Run It Consulting, LLC, (hereinafter "Petitioner"), by and through counsel, The Trademark Company, PLLC, in accordance with 37 C.F.R. § 2.124 and § 703.02(a) of the TBMP hereby notes the trial deposition as set forth below:

Name of Witness: Markus Trillsch

Address: 704 Highway 71 W, B200
Bastrop, TX 78602

Officer To Administer Deposition: Accurate Court Reporting, Inc.
24650 Sandhill Blvd., Suite 401
Punta Gorda, FL 33983

Date and Time of Deposition: March 7, 2013 at 10:00 a.m. local time

Place of Deposition: 704 Highway 71 W, B200
Bastrop, TX 78602



DATED this 28th day of February, 2013.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esquire

344 Maple Avenue West, Suite 151

Vienna, VA 22180

Telephone (800) 906-8626 x100

Facsimile (270) 477-4574

mswyers@TheTheTrademarkCompany.com

Attorney for Petitioner

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 1,962,898,
For the mark AMERICAN MUSCLE,
Registered on the Principal Register on March 19, 1996.

Run It Consulting, LLC,

Petitioner,

vs.

Augusto Lodi,

Registrant.

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:
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:
:
:

Cancellation No. 92055426

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing pleading this 28th day of
February, 2013, as specified by the rules, to be served, via email, per agreement, upon:

Michael A. DiNardo, Esq.
Kelley & Kelley LLP
6320 Canoga Avenue, Suite 1650
Woodland Hills, CA 91367

/Matthew H. Swyers/
Matthew H. Swyers



AMERICANMUSCLE

SPORTS NUTRITION COMPANY



Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85413449

Filing Date: 09/01/2011

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	\\TICRS\EXPORT\1\IMAGEOUT 1\1\854\134\85413449\xml\1\FTK0002.JPG
*SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	AmericanMuscle Sports Nutrition Company
*COLOR MARK	NO
*COLOR(S) CLAIMED (If applicable)	
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of three distinct shapes that make up a trapezoid shape. On the left is a diagonal bar and on the right is an upside down v shape with a triangle directly underneath. Below the shapes is the stylized text "AmericanMuscle" which appears above the stylized text "Sports Nutrition Company".
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	944 x 420
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Run It Consulting, LLC

EXHIBIT

3

*STREET	201 Greystone Dr.
*CITY	Bastrop
*STATE (Required for U.S. applicants)	Texas
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	78602
PHONE	7132699330
EMAIL ADDRESS	mtrillsch@gmail.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
*TYPE	LIMITED LIABILITY COMPANY
* STATE/COUNTRY WHERE LEGALLY ORGANIZED	Nevada
GOODS AND/OR SERVICES AND BASIS INFORMATION	
* INTERNATIONAL CLASS	005
IDENTIFICATION	Dietary supplements; Nutritional supplements; Nutritional supplements for muscle growth; Weight management supplements
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/17/2011
FIRST USE IN COMMERCE DATE	At least as early as 08/18/2011
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT\1\IMAGEOUT 1\854\134\85413449\xml\1\FTK0003.JPG
	\\TICRS\EXPORT\1\IMAGEOUT 1\854\134\85413449\xml\1\FTK0004.JPG
	\\TICRS\EXPORT\1\IMAGEOUT 1\854\134\85413449\xml\1\FTK0005.JPG
SPECIMEN DESCRIPTION	Digital images of products with labels attached currently used in commerce
ADDITIONAL STATEMENTS SECTION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	

*CLAIMED PRIOR REGISTRATION (If applicable)	
*CONSENT (NAME/LIKENESS) (If applicable)	
*CONCURRENT USE CLAIM (If applicable)	
CORRESPONDENCE INFORMATION	
*NAME	Run It Consulting, LLC
FIRM NAME	Run It Consulting, LLC
*STREET	201 Greystone Dr.
*CITY	Bastrop
*STATE (Required for U.S. applicants)	Texas
*COUNTRY	United States
*ZIP/POSTAL CODE	78602
PHONE	7132699330
*EMAIL ADDRESS	mtrillsch@gmail.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/Markus Trillsch/
* SIGNATORY'S NAME	Markus Trillsch
* SIGNATORY'S POSITION	CEO
* DATE SIGNED	09/01/2011

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85413449

Filing Date: 09/01/2011

To the Commissioner for Trademarks:

MARK: AmericanMuscle Sports Nutrition Company (stylized and/or with design, see mark)

The literal element of the mark consists of AmericanMuscle Sports Nutrition Company.

The mark consists of three distinct shapes that make up a trapezoid shape. On the left is a diagonal bar and on the right is an upside down v shape with a triangle directly underneath. Below the shapes is the stylized text "AmericanMuscle" which appears above the stylized text "Sports Nutrition Company".

The applicant, Run It Consulting, LLC, a limited liability company legally organized under the laws of Nevada, having an address of

201 Greystone Dr.
Bastrop, Texas 78602
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 005: Dietary supplements; Nutritional supplements; Nutritional supplements for muscle growth; Weight management supplements

In International Class 005, the mark was first used at least as early as 08/17/2011, and first used in commerce at least as early as 08/18/2011, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Digital images of products with labels attached currently used in commerce.

Specimen File1

Specimen File2

Specimen File3

The applicant's current Correspondence Information:

Run It Consulting, LLC
Run It Consulting, LLC
201 Greystone Dr.
Bastrop, Texas 78602
7132699330(phone)
mtrillsch@gmail.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

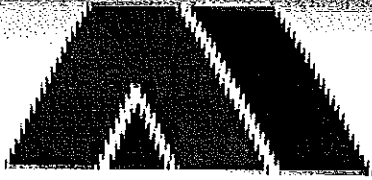
Signature: /Markus Trillsch/ Date Signed: 09/01/2011
Signatory's Name: Markus Trillsch
Signatory's Position: CEO

RAM Sale Number: 5689
RAM Accounting Date: 09/02/2011

Serial Number: 85413449
Internet Transmission Date: Thu Sep 01 18:09:42 EDT 2011
TEAS Stamp: USPTO/FTK-173.227.92.2-20110901180942534
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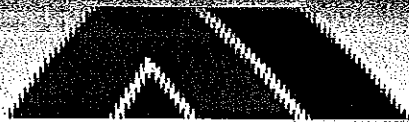
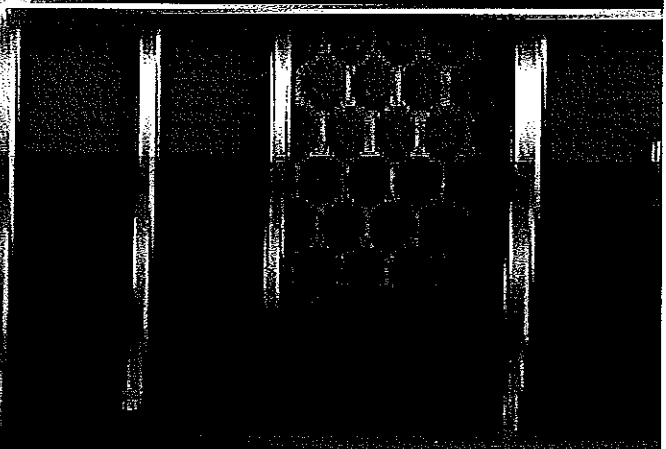
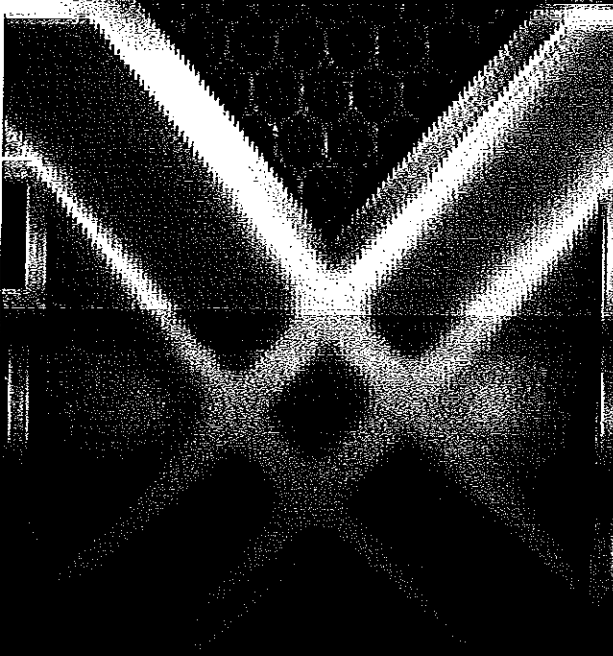


AMERICANMUSCLE
SPORTS NUTRITION COMPANY



AMERICANMUSCLE

SPORTS NUTRITION COMPANY



AMERICANMUSCLE

SPORTS NUTRITION COMPANY





AMERICANMUSCLE
SPORTS NUTRITION COMPANY

NEW

SUGGESTED USE

Take 1 scoop (30g) 15-20 minutes before your workout.

DIETARY INFORMATION

Per 30g Scoop: 10g Carbohydrate, 2g Protein, 0g Fat, 0g Sugar, 0g Fiber.

INGREDIENTS

XPOLISIVE ENERGY TECHNOLOGY (XET MATRIX), ADVANCED PUMP TECHNOLOGY, MICRO ABSORPTION SYSTEM, CITRULINE NITRATE, L-ARGININE, L-GLUTAMINE, L-GLUTAMIC ACID, L-ALANINE, L-GLYCINE, L-PROLINE, L-VALINE, L-LEUCINE, L-ISOLEUCINE, L-METHIONINE, L-THREONINE, L-SERINE, L-ASPARAGINE, L-GLUTAMINE, L-GLUTAMIC ACID, L-ALANINE, L-GLYCINE, L-PROLINE, L-VALINE, L-LEUCINE, L-ISOLEUCINE, L-METHIONINE, L-THREONINE, L-SERINE, L-ASPARAGINE.

WARPATH

PRE-WORKOUT
WITH NOC

For best results, consume 1 scoop (30g) 15-20 minutes before your workout.

WARNING

CONTAINS CITRULINE NITRATE
XPOLISIVE ENERGY TECHNOLOGY (XET MATRIX)
ADVANCED PUMP TECHNOLOGY
MICRO ABSORPTION SYSTEM

30 SERVINGS

DIETARY SUPPLEMENT
NET WT. 420 G

To: Run It Consulting, LLC (intrillsch@gmail.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85413449 -
AMERICANMUSCLE SPORTS NUTRITION - N/A
Sent: 12/19/2011 4:42:47 PM
Sent As: ECOM114@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 85413449

MARK: AMERICANMUSCLE SPORTS
NUTRITION

85413449

CORRESPONDENT ADDRESS:

RUN IT CONSULTING, LLC
RUN IT CONSULTING, LLC
201 GREYSTONE DR
BASTROP, TX 78602-7450

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

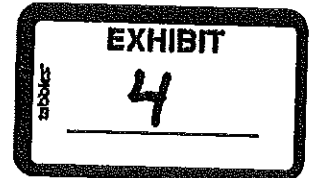
APPLICANT: Run It Consulting, LLC

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:
intrillsch@gmail.com

OFFICE ACTION



STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 12/19/2011

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. See 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and

must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 1962898. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

The registered mark is AMERICAN MUSCLE for apparel and sporting goods including vitamin supplements. Applicant's proposed mark is AMERICANMUSCLE SPORTS NUTRITION COMPANY combined with a stylized design for "Dietary supplements; Nutritional supplements; Nutritional supplements for muscle growth; Weight management supplements."

WORD DOMINANT

Although applicant's mark includes a stylized design, when a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods and/or services. Therefore, the word portion is normally accorded greater weight in determining likelihood of confusion. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987); *Amoco Oil Co. v. Amerco, Inc.*, 192 USPQ 729, 735 (TTAB 1976); TMEP §1207.01(c)(ii). AMERICAN MUSCLE is the

entirety of the registered mark. Although applicant's proposed mark contains additional elements, the most prominent, literal and dominant element is the term AMERICANMUSCLE. The additional wording SPORTS NUTRITION COMPANY appears in small print and is also highly descriptive and functions less significantly as a source indicator for the underlying goods. Finally, the removal of the space and combining of the words AMERICAN and MUSCLE would not preclude confusion. Applicant's proposed mark would still primarily be referred to and recalled by consumers as AMERICAN MUSCLE supplements.

And although applicant's wording is in a stylized font as opposed to the registered mark's standard characters, a mark in typed or standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element itself and not in any particular display. TMEP §1207.01(c)(iii); see 37 C.F.R. §2.52(a). Thus, a mark presented in stylized characters or otherwise in special form will not generally avoid likelihood of confusion with a mark in typed or standard characters because the marks could be presented in the same manner of display. See, e.g., *In re Melville Corp.*, 18 USPQ2d 1386, 1387-88 (TTAB 1991); *In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988).

RELATEDNESS OF GOODS AND TRADE CHANNELS

The presumption under Trademark Act Section 7(b), 15 U.S.C. §1057(b), is that the registrant is the owner of the mark and that use of the mark extends to all goods and/or services identified in the registration. The presumption also implies that the registrant operates in all normal channels of trade and reaches all classes of purchasers of the identified goods and/or services. *In re Melville Corp.*, 18 USPQ2d 1386, 1389 (TTAB 1991); *McDonald's Corp. v. McKinley*, 13 USPQ2d 1895, 1899 (TTAB 1989); *RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964-65 (TTAB 1980); see TMEP §1207.01(a)(iii).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration. In addition, applicant must satisfy the following requirements.

DISCLAIMER

Applicant must insert a disclaimer of SPORTS NUTRITION COMPANY in the application because the term merely describes applicant's field of business and business form. See 15 U.S.C. §1056(a); TMEP §§1213, 1213.03(a).

Business entity designations such as "Corporation," "Inc.," "Company," and "Ltd." must be disclaimed because they merely indicate applicant's entity type and generally do not function to indicate the source of goods or services. TMEP §1213.03(d); see, e.g., *Goodyear's India Rubber Glove Mfg. Co. v. Goodyear Rubber Co.*, 128 U.S. 598, 602-03 (1888); *In re Patent & Trademark Servs., Inc.*, 49 USPQ2d 1537, 1539-40 (TTAB 1998); *In re The Paint Prods. Co.*, 8 USPQ2d 1863, 1866 (TTAB 1988).

The following is the accepted standard format for a disclaimer:

No claim is made to the exclusive right to use "SPORTS NUTRITION COMPANY" apart from the mark as shown.

TMEP §1213.08(a)(i).

The Office can require an applicant to disclaim an unregistrable part of a mark consisting of particular wording, symbols, numbers, design elements or combinations thereof. 15 U.S.C. §1056(a). Under Trademark Act Section 2(e), the Office can refuse registration of an entire mark if the entire mark is merely descriptive, deceptively misdescriptive, or primarily geographically descriptive of the goods. 15

U.S.C. §1052(e). Thus, the Office may require an applicant to disclaim a portion of a mark that, when used in connection with the goods or services, is merely descriptive, deceptively misdescriptive, primarily geographically descriptive, or otherwise unregistrable (e.g., generic). See TMBP §§1213, 1213.03.

Failure to comply with a disclaimer requirement can result in a refusal to register the entire mark. TMEP §1213.01(b).

A "disclaimer" is a statement that applicant does not claim exclusive rights to an unregistrable component of a mark. TMEP §1213. A disclaimer does not affect the appearance of the applied-for mark. See TMEP §1213.10.

/John Hwang/
john.hwang@uspto.gov
LAW OFFICE 114
USPTO
571-272-9452
571-273-9114 FAX

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

Print: Dec 19, 2011

74584611

TYPED DRAWING

Serial Number
74584611

Status
REGISTERED AND RENEWED

Word Mark
AMERICAN MUSCLE

Standard Character Mark
No

Registration Number
1962898

Date Registered
1996/03/19

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(1) TYPED DRAWING

Owner
LODI, AUGUSTO DBA American Muscle INDIVIDUAL ITALY 3012 NORTH GRANDEUR
AVENUE ALTADENA CALIFORNIA 91001

Goods/Services
Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
vitamin supplements. First Use: 1987/05/22. First Use In Commerce:
1987/05/28.

Goods/Services
Class Status -- ACTIVE. IC 025. US 022 039. G & S: sportswear,
namely sweat pants, sweat shirts, shorts, T-shirts, tank tops and
jackets. First Use: 1987/05/22. First Use In Commerce: 1987/05/28.

Goods/Services
Class Status -- ACTIVE. IC 028. US 022 023 038 050. G & S: weight
lifting gloves, belts and straps, knee and wrist wraps. First Use:
1987/05/22. First Use In Commerce: 1987/05/28.

Prior Registration(s)
1505243;1549729

Print: Dec 19, 2011

74584611

Filing Date
1994/10/12

Examining Attorney
JENKINS, CHARLES L.

To: Run It Consulting, LLC (mtrillsch@gmail.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85413449 -
AMERICANMUSCLE SPORTS NUTRITION - N/A
Sent: 12/19/2011 4:42:48 PM
Sent As: ECOM114@USPTO.GOV
Attachments:

**IMPORTANT NOTICE REGARDING YOUR TRADEMARK
APPLICATION**

Your trademark application (Serial No. 85413449) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office ("USPTO") has written a letter (an "Office Action") on 12/19/2011 to which you must respond. Please follow these steps:

1. Read the Office letter by clicking on this [link](http://tmportal.uspto.gov/external/portal/tow) OR go to <http://tmportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter.

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2. Respond within 6 months, calculated from 12/19/2011 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System Response to Office Action form. If you have difficulty using the USPTO website, contact TDR@uspto.gov.

3. Contact the examining attorney who reviewed your application with any questions about the content of the office letter:

/John Hwang/
john.hwang@uspto.gov
LAW OFFICE 114
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Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, please use the Trademark Electronic Application System Response to Office Action form.

ORIGINAL TRANSCRIPT

IN THE UNITED PATENT AND TRADEMARK OFFICE The Trademark Trial and Appeal Board

In the matter of U.S
Registration 1,962,898,
For the mark AMERICAN MUSCLE,
Registered on the Principal
Register on March 19, 1996,

Run It Consulting, LLC,

Petitioner,

vs.

Cancellation No.: 92055426

Augusto Lodi

Registrant.

Oral Deposition of **MARKUS TRILLSCH**, held
Pursuant to Notice and Agreement on Thursday, March 7,
2013, at the Office of Run It Consulting, 704 Highway 71
West, B200, Bastrop, Texas, 78602, commencing at 10:24
a.m., before Autumm J. Smith, a Certified Shorthand
Reporter in and for the State of Texas.



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M. TRILLSCH

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Mr. Augusto Lodi

INDEX OF EXHIBITS

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MARKED

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M. TRILLSCH

DEPOSITION OF MARKUS TRILLSCH

MARCH 7, 2013

(Whereupon, all Exhibits

Numbers 1 through 4 marked prior to deposition.)

Thereupon,

MARKUS TRILLSCH,

having been first duly sworn, testified as
follows:

EXAMINATION

BY-MR. SWYERS:

Q. Would you kindly state your name --

MR. SWYERS: Jeff, thank you.

BY-MR. SWYERS:

Q. Would you kindly state your name for
the record?

A. My name is Markus Trillsch.

Q. And could you spell that, please?

A. Yes. That's M-A-R-K-U-S, last name
is T-R-I-L-L-S-C-H.

Q. And what state do you reside in?

A. Texas.

Q. And, Mr. Trillsch, who do you work
for?

A. Run It Consulting.

M. TRILLSCH

Q. Where is Run It Consulting located?

A. It's located in Bastrop, Texas at 704 Highway 71 West, Unit B200, Bastrop, Texas, 78602.

Q. And what is your current position with Run It Consulting?

A. CEO and owner.

Q. And just give us an idea of what does that entail on a day-to-day basis?

A. Well, basically, I handle all of the brand acquisitions, and you know, we -- we launched several different nutritional brands. Run It Consulting is the parent company that owns several other brands -- supplement brands.

Q. How long have you -- thank you. How long have you been CEO and/or the owner of this company?

A. Since 2009, August 2009.

Q. All right. And is generally -- well, how long has Run It Consulting been in business?

A. Since 2009, so about three and a half, four years.

M. TRILLSCH

Q. Okay. You understand today that you are appearing for a deposition which is your trial testimony before the Trademark Trial and Appeal Board. Is that correct?

A. Yes, that's correct.

Q. Okay. I'm handing -- well, I'm not handing you. I'll ask you to take a look at what has been marked as Exhibit Number-1. Can you do so for me?

A. Yes, I've got it.

Q. Okay. Can you identify that, please?

A. Yes. This is the notice of trial deposition.

Q. And are you appearing here today as a result of this notice of trial deposition?

A. Yes, that's correct.

Q. Okay.

MR. SWYERS: At this juncture, I'll move this into evidence if counsel has any objection?

MR. DINARDO: No objection.

BY-MR. SWYERS:

Q. Did there come a time that Run It

M. TRILLSCH

Consulting decided to file for a trademark,
the American Muscle Sports Nutrition Company?

A. Yes.

Q. Okay. And I would like to direct
your attention to what has been marked as
Exhibit Number-2. Can you take a look at
that for me?

A. Yes, sir. I got it right here.

Q. Okay. Thank you. Tell us what
that is.

A. That is the American Muscle Sports
Nutrition Company logo.

Q. Is this a true and accurate copy of
the logo Run It Consulting decided upon for
this mark?

A. Yes, that's correct.

Q. Okay.

MR. SWYERS: At this point I will
move this into evidence as Exhibit Number-2.

MR. DINARDO: No objection.

BY-MR. SWYERS:

Q. What was the intent behind adopting
this trademark?

A. It was one of the brands -- we

M. TRILLSCH

wanted to trademark this logo for our
American Muscle supplement brand.

Q. And tell us, when you say supplement
brand, what do you mean?

A. They're dietary supplements that are
distributed throughout several vitamin stores
like GNC, Max Muscle, Compete Nutrition,
different, you know, vitamin, dietary
supplement retailers.

Q. Now, did there come a time that Run
It Consulting decided it should register this
trademark?

A. Yes.

Q. Okay. And what, if anything, did
Run It Consulting do to register the
trademark?

A. We just went on Legalzoom.com and
went to the trademark filing, you know,
application process and just ran it all
through Legalzoom.com.

Q. Okay. Can I direct your attention
kindly to Exhibit Number-3?

A. Yes.

Q. Can you tell us what this is?

M. TRILLSCH

A. This looks like the trademark application.

Q. Okay. And to the best of your knowledge, is this the trademark application for the logo that was identified earlier in Exhibit Number-2?

A. Yes, that's correct.

Q. Okay. And this is the trademark application which was filed on behalf of Run It Consulting with the U.S. Patent and Trademark Office?

A. Yes, that's correct.

Q. Okay. Is this a truly accurate copy of that application?

A. Yes.

MR. SWYERS: At this time I would move Exhibit Number-3 into evidence.

MR. DINARDO: No objection.

MR. SWYERS: Thank you.

BY-MR. SWYERS:

Q. After filing for this trademark application, what, if any, correspondence did you receive from the U.S. Patent and Trademark Office?

M. TRILLSCH

A. I just received a refusal -- notice of refusal.

Q. A refusal to register the trademark?

A. Yes.

Q. All right. Directing your attention to Exhibit Number-4, can you identify this for us, please?

A. Okay. I've got it here. It looks like the U.S. PTO's refusal office action.

Q. And is this the refusal that you received on this trademark application?

A. Yes, it is.

Q. Okay. Is -- to the best of your knowledge, is this a true and accurate copy of the office action?

A. Yes, it is.

MR. SWYERS: At this time I'll move this into evidence as well, Exhibit Number-4.

MR. DINARDO: No objection.

BY-MR. SWYERS:

Q. Okay. Directing your attention to the office action. After receiving this, what, if anything, was your impression as to why your trademark had been refused?

M. TRILLSCH

A. It was, I guess, for likelihood of confusion.

Q. And was there a particular trademark that they cited in that refusal?

A. Yes. It was the American Muscle trademark.

Q. Is this the same trademark that we are -- well, currently have this action pending against?

A. Yes.

Q. Okay. Now, what, if anything, did you do following the receipt of this office action in reference to that trademark, the blocking trademark?

A. I did several searches, online forums, you know, Google searches, did, you know, hours of research and looking through every single web page on Google, looking at different forums like Bodybuilding.com to see if this mark actually existed.

Q. And what was the result of your investigation?

A. I was unable to find any proof that this mark currently existed.

M. TRILLSCH

Q. So --

MR. SWYERS: You know, I had a "so", but I actually think I don't have a "so" anymore. At this juncture, I actually have nothing further.

Mr. Dinardo.

EXAMINATION

BY-MR.DINARDO:

Q. Wow, okay. Good morning, Mr. Trillsch.

A. Good morning.

Q. You understand that you're still under oath from the earlier swearing in. Correct?

A. Yes.

Q. Okay. I want to back up a little bit. You mentioned that Run It Consulting, you deal with brand acquisition, and Run It Consulting has several brands that it deals in. Is that correct?

A. That's correct.

Q. Are these under different corporate entities? You mentioned something about a parent company. I'm trying to find out

1 something about the corporate structure of
2 Run It Consulting.

3
4 A. Basically, Run It Consulting owns the
5 American Muscle brand as well as several
6 other brands. Run It Consulting is the
7 parent company.

8 Q. Is that a subsidiary of another
9 company?

10 A. No. It's the main company. It's
11 the corporation that owns all the different
12 trademarks and different brands.

13 Q. Okay. And what would -- what were
14 the other companies that you referenced when
15 you talk about a parent corporation?

16 A. I was just referencing towards Run
17 It Consulting being the parent company of
18 these brands, you know, like Regimen,
19 American Naturals, American Muscle.

20 Q. And is Run It Consulting, then, the
21 entity that owns the rights to keep clients
22 in the American Muscle Sports Nutrition
23 Company trademark?

24 A. Yes, that's correct.

25 Q. What is New York Nutrition Company?

M. TRILLSCH

A. New York Nutrition Company is another -- it's a distribution company that Run It Consulting owns 88 percent of.

Q. And does New York Nutrition Company distribute Run It's American Muscle brand product?

A. Yes.

Q. Do they have a territory that they distribute in?

A. Worldwide.

Q. Worldwide?

A. Yes, sir.

Q. Who is Cada System, C-A-D-A Systems, Inc.?

A. Cada Systems is an international distributor that distributes and handles the sale of products in India.

Q. And so do they operate under the auspices of New York Nutrition Company, or are they an independent company?

A. They're an independent company.

Q. They're --

(Whereupon, the phone cuts out.)

BY-MR. DINARDO:

M. TRILLSCH

Q. -- in India?

A. Could you repeat the question?

Q. Is Cada Systems one of its
distribution of India?

A. Yes. They're only allowed to
distribute in India.

Q. Okay. So is India excluded from New
York Nutrition Company territory?

A. Yes. We gave them the exclusive
rights to distribute to India.

Q. All right. Your trademark
application identifies Run It Consulting as
an LLC. In what state are they
incorporated?

A. Nevada.

Q. When did you incorporate there?

A. Back in 2009.

Q. Do you remember who the incorporator
was?

A. No, I can't recall who it was.

Q. Did you use an attorney?

A. Yes, I used an attorney. I think
it might have been the corporation company.

Q. The corporation. Okay. Do you know

M. TRILLSCH

1 who the registered agent is of Run It
2 Consulting, LLC?

3 A. It should be myself. It was, you
4 know, the corporation company, but I think we
5 switched that probably a year ago.

6 Q. Okay. Would it surprise you to know
7 that I couldn't find a record of Run It
8 Consulting with the Nevada Secretary of
9 State?

10 A. Yeah, it would.

11 Q. Okay. Can you identify the officers
12 of Run It Consulting for me?

13 A. Yes. It would be myself as CEO and
14 then Jason Duran as COO.

15 Q. Those are the only two officers?

16 A. Yes, sir.

17 Q. Are there any managers that you
18 employ -- well, actually, let me back up --
19 how many employees does Run It Consulting
20 have?

21 A. It's got --

22 MR. SWYERS: If I may, Markus, one
23 second. I'm going to insert an objection.
24 It's going outside the scope our trial
25

M. TRILLSCH

deposition at this juncture, and it seems more of a discovery deposition.

MR. DINARDO: I'm just trying to get some background and identify some people. I can just ask a couple more questions on this line.

MR. SWYERS: Within the context, I'm not quite sure what the relevance is of the trial testimony concerning the abandonment of the trademark. I understand -- I'm sorry -- I'm just trying to figure out what the possible relevance could be beyond the fact that it's outside the scope as well.

MR. DINARDO: I indulge your objection, and I refer to the TTAB procedure that in the context, suggestions are noted but the questions still answered. It's not before the tribunal and any objections to the extent the testimony offered are resolved at a later time.

MR. SWYERS: I can see that point, so the objection will be preserved and then you may continue asking. Thank you.

BY-MR. DINARDO:

M. TRILLSCH

Q. Okay. I'm sorry. Just real quick, I'm just trying to identify people associated with Run It Consulting. How many employees do you have, roughly?

A. We've got about five -- six employees.

Q. Is that counting yourself and Jason Duran?

A. Yes, that's correct.

Q. Would one of those employees be Robert Boyd?

A. Yes, that's correct.

Q. Okay. What is his role?

A. He's the vice president of sales.

THE REPORTER: Can you repeat that, Counsel?

A. Could you repeat the name one more time?

MR. DINARDO: Robert Boyd.

THE REPORTER: Okay.

A. Okay.

BY-MR. DINARDO:

Q. Okay. Moving on. I want to get into how you selected American Muscle Sports

M. TRILLSCH

Nutrition Company. You testified -- well, in your interrogatory responses, you state, "Petitioner wanted to choose a mark for its product that had an all-American connotation."

Do you recall that?

A. Yes.

Q. And then you go on to state that, "Petitioner did a search for American Muscle in August of 2011 for the availability in connection to the supplement."

Do you recall that?

A. Yes.

Q. Is that -- would that be -- that would be a separate search from the one you conducted after receiving the refusal office action that's been entered as Exhibit Number-4. Correct?

A. Yes.

Q. And when you did that search for American Muscle in August 2011, did you locate any American Muscle marks for supplement?

A. No, I did not.

Q. Describe for me that search you did

M. TRILLSCH

1 in August of 2011. Where did you conduct a
2 search?
3

4 A. Just, you know, all over the
5 internet. Just, you know, I've been in the
6 industry for a while, so I pretty much know
7 all the product lines out there. You know,
8 I searched Gnc.com; I searched
9 Vitaminshoppe.com; searched Bodybuilding.com;
10 pretty much all over the place. And there
11 was nothing, no supplement brand, no
12 supplement line, or any of that ever showed
13 up on any searches.

14 Q. Did you ever do a search of the
15 USPTO website?

16 A. No.

17 Q. You said you've been in the business
18 for a while. How long have you been in the
19 business of supplements?

20 A. Since 2003.

21 Q. Have you always been in this area of
22 Texas?

23 A. Yes. About an hour away. You
24 know, I was originally out of College
25 Station, Texas for a former company that I

M. TRILLSCH

started and worked for, for 10 years.

Q. What was that company?

A. Woodbolt Distribution.

Q. Woodbolt?

A. Yes, sir.

Q. And what did Woodbolt do?

A. Manufactured and distributed a supplement line called Cellucor.

Q. Are you familiar at all with a company called Advanced Metabolic Research?

A. No, sir.

Q. I'm sorry?

A. No, sir.

Q. What about a gentleman named John Cantu?

A. No, sir.

Q. Okay. At any point prior to filing your trademark application for American Muscle Sports Nutrition Company, did you have a search of the USPTO website conducted?

A. I just went through LegalZoom. I just went on -- you know, saw a commercial for trademarking on Legalzoom.com and got on that website and just kind of clicked

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trademark and just followed their online steps.

Q. Okay. So you filed your trademark application through LegalZoom?

A. Correct.

Q. But you did not do a separate trademark search through LegalZoom or on the USPTO website?

A. Yeah. LegalZoom did a search for me. I paid for them to do the search.

Q. Oh, so you paid LegalZoom to do a search?

A. Yeah. It was like the whole package for trademark; they do everything. And from what I got back from them, nothing -- you know, there was no problem; and you know, it seemed like everything was cool until the refusal letter came in.

Q. Did LegalZoom send you those search results?

A. Not too sure. I can't recall, actually.

Q. Well, do you recall when you ordered this service from LegalZoom whether or not

M. TRILLSCH

1 they reported on the existence of any other
2 American Muscle mark?

3
4 A. No, sir. They just -- you know, I
5 guess, asked me if I wanted to proceed. You
6 know, it was just like a one step process.
7 You know, I just went on there, filled all
8 the, you know, forms and whatnot out; and
9 then the next thing I remember was, you
10 know, getting the refusal.

11 Q. So you only went on LegalZoom one
12 time and in that one time -- I'm sorry.
13 That's going to be a confusing question.

14 With regard to your American Muscle
15 Sports Nutrition Company trademark, at the
16 time you went on LegalZoom to file your
17 trademark application, you understand that
18 LegalZoom also conducted a search?

19 A. Yeah. I figured that they did it
20 all for you. You know, I figured that they
21 would just say you can't register this if
22 for some reason there was any problems.

23 Q. Oh, but -- okay. So you just --

24 A. I'm not like an expert or anything
25 at trademarking. I just thought -- you

M. TRILLSCH

1 know, that's why I went through LegalZoom
2 just because I saw a commercial on it and
3 just let -- you know, I figured they could
4 handle it all.
5

6 Q. Okay. But you don't know for
7 certain that they conducted a search?

8 A. Not -- I can't recall, to be honest
9 with you. I just went on LegalZoom and
10 clicked on the trademark link or whatever and
11 then just started filling everything out, and
12 from what I recall, that was it. You know,
13 then I got the office action.

14 Q. Okay. I want to get to, then, the
15 search that you conducted after receiving the
16 office action rejecting your application.
17 You mentioned that you then spent several
18 hours looking on the internet. Is that
19 accurate, or did you spend longer or shorter?

20 A. Yeah, several hours.

21 Q. And how did you conduct your search?
22 Did you search various search engines?

23 A. Yeah. Various search engines,
24 various keywords: American Muscle
25 supplements, American Muscle products, American

M. TRILLSCH

Muscle vitamins, American Muscle nutrition,
just so many I can't recall all of them but
I just --

Q. Okay. Thank you. We'll get to the
queries in a second. Which search engines
did you use?

A. I used Google, Yahoo, Bing, and then
I also, you know, searched on various
bodybuilding-type forums.

Q. Which bodybuilding forums?

A. Bodybuilding.com, Anabolic Minds,
those are just two.

Q. What was the last one?

A. Anabolic Minds.

Q. Okay. And now you looked at some
search queries that you used on websites and
forums. Can you give me some examples of
the queries that you used?

A. Yes. American Muscle supplements,
American Muscle vitamins, American Muscle
products, that's just to name a few. I
tried every, you know -- I tried just to
search as much as I could to see what would
come up.

M. TRILLSCH

1
2 Q. And did you use those queries on,
3 for example, all of the search engines that
4 you named, Google, Yahoo, and Bing?

5 A. Yeah. I just tried several
6 variations on each one and just kind of
7 looked through all the pages and, you know,
8 just looked around really just to see what
9 was on there; and really, nothing showed up
10 besides muscle cars.

11 Q. Besides what?

12 A. You know, American muscle cars.

13 Q. Oh, muscle cars.

14 A. Yeah. Like I never -- there was
15 nothing that showed anything being tied to a
16 supplement called American Muscle.

17 Q. So when you searched American Muscle
18 supplements, for example, on Bing, it didn't
19 produce a hit for a business in Altadena,
20 California?

21 A. No, sir.

22 Q. When you got search --

23 THE REPORTER: What town did he say?

24 A. Could you repeat that town one more
25 time for the court reporter?

M. TRILLSCH

MR. DINARDO: Altadena, A-L-T-A-D-E-N

A.

THE REPORTER: Thank you.

BY-MR. DINARDO:

Q. So when you did the search queries on the search engine, did you just look at the hits that came up on the search pages or did you click on some of the web pages that came up in the results?

A. I just pretty much looked at each. You know, I went through several pages of Google and the different search engines; and then I'd click on websites, you know, just to kind of see what was bringing up. And nothing was bringing up anything that had anything to do with supplements or nutrition.

Q. Okay. Beyond your internet searching, did you search anywhere else?

A. No, sir.

Q. Do you believe that an active website is a requirement for a business to establish use in commerce?

A. Repeat the question.

Q. Do you believe that an active

M. TRILLSCH

website is a requirement for a business to establish use of a trademark in commerce?

MR. SWYERS: I'm going to object to the fact that you're asking the witness to make a legal conclusion in trademark law.

MR. DINARDO: I'm just asking what he believes.

MR. SWYERS: You can answer, Markus, if you'd like -- or excuse me -- if you can.

A. You know, I guess so, yeah.

BY-MR. DINARDO:

Q. Okay. Other than your own search, did you hire a private investigator to try and find any American Muscle mark?

A. No, sir.

Q. In the petition for cancellation, you allege that, "No evidence can be located of registered use of the mark American Muscle in connection with the group identified."

Other than what we've discussed already, do you have any other evidence to support the contention that you couldn't find use of the mark American Muscle by my

1 client?

2 A. No, sir.

3 Q. You also allege that, "Registrant did
4 not retain attempt to resume use of the mark
5 American Muscle in the future."
6

7 Do you have any evidence regarding
8 my client's attempt to use the American
9 Muscle mark in the future?

10 A. Could you repeat that one more time.
11 It didn't come in clear.

12 Q. In the petition for cancellation, you
13 allege that, "Registrant did not retain
14 attempt to resume use of the mark American
15 Muscle in the future."

16 Do you have any evidence to support
17 that contention?

18 A. I don't think I really understand
19 the question.

20 Q. Have you located anything in your
21 various searches that indicate to you --
22 excuse me -- that my client does not intend
23 to use American Muscle in the future?

24 A. Just the fact that there was really
25 no, no -- nothing about the mark or about

1 the brand.

2
3 Q. Okay. I'm just trying to establish
4 that everything that we've talked about as
5 the -- as far as your knowledge is
6 concerned, every -- all the evidence that you
7 have regarding my client's use or intent to
8 use the American Muscle mark in the future?

9 A. Is that a question?

10 Q. Anything other than the searches that
11 we've discussed?

12 A. Yes, that's correct.

13 Q. You mentioned that Run It
14 Consulting's goods are sold through GNC. Is
15 that correct?

16 A. That is correct.

17 Q. To your knowledge, are they currently
18 sold in GNC?

19 A. Yes, that's correct.

20 Q. Would it surprise you to know that
21 your goods are not listed on the GNC
22 website?

23 A. No, that doesn't surprise me. We
24 don't sell -- we prohibit GNC from selling
25 our goods on Gnc.com.

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Q. Why is that?

A. We don't allow any internet sales of our product besides Americanmuscle.us. We sell to brick and mortar store -- we sell to brick and mortar locations only, no internet.

Q. Okay. I believe -- well, your interrogatory response also identified a chain of stores called Complete Nutrition?

A. That's correct.

Q. Where are those stores located?

A. All across the United States.

Q. Do you sell to all of them?

A. Yes, sir. All 150.

Q. And the same thing with GNC -- well, let me ask -- that's going to be -- that will be confusing. Let me back up.

And where -- what GNC stores do you sell to, what territory?

A. All across the United States. All 1,000 franchise GNC locations from Washington to California to Nevada. Pretty much, you know, in every state.

Q. And even though GNC sells your product in the store, they wouldn't advertise

M. TRILLSCH

your product even on the website. They --
it's just in their stores?

A. That is 100 percent correct. Yes.
We do not allow any advertisement of our
product on their website or any sales on
their website.

Q. Do you allow advertising your product
on anybody's website?

A. Every now and then someone can put a
banner link exchange up, but there's no --
it's prohibited to sell online. You can
find the product here and there on like an
Amazon.com or an Ebay.com, but those are
actually unauthorized retailers putting
products online. We prohibit online sales.
We don't do any online sales, we never will
besides our own Americanmuscle.us. It goes
with our business model.

Q. I'm sorry. Americanmuscle.us is the
only place where someone can buy your product
online?

A. Yeah. It's the only place I'm aware
of, you know, that sells my product. Like I
said, there could be an Amazon.com, you know,

M. TRILLSCH

1 where a store -- an actual brick and mortar
2 store could be back-dooring the product
3 online through Amazon or sell it to another
4 website; and whenever we find out about that,
5 those retailers are immediately cut off.
6

7 Q. Okay. What about independent gyms?
8 Do you have -- I believe you identified in
9 your interrogatory responses that you do sale
10 to independent gyms.

11 A. Yes, that's correct. Gyms, you
12 know, mom-and-pop stores that aren't big name
13 franchise names like GNC, Max Muscle, or
14 Complete Nutrition. We sell to Anytime
15 Fitnesses. We sell to Gold's Gyms. We sell
16 to just mom-and-pop gyms all over the U.S.
17 and worldwide.

18 Q. In your responses to request for
19 production, in response to a request for
20 documents to report or refute your contention
21 of an inability to locate evidence of use by
22 registrants of the American Muscle mark, you
23 indicate that you will supplement that
24 response at a reasonable time before trial --
25 "will supplement documents for this request

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in a reasonable time prior to trial." Just to establish a record, did you supplement that response prior to trial?

MR. SWYERS: If I may on one of the rare occasions I'll chime in unless you might need him to answer that, no, they were not supplemented by our office.

MR. DINARDO: I will accept that. Thank you, Counsel.

MR. SWYERS: Thank you.

BY-MR. DINARDO:

Q. Do you -- are you presently in possession of any documents that would support or refute the contention of your inability to find evidence of my client's use of his mark?

A. I don't think I understand. Could you repeat that? I don't understand that question.

Q. Do you have any documents regarding your efforts to locate my client's use of his mark in commerce?

A. I mean, just web searches. I didn't print anything.

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Q. Okay. So you don't have any documents?

A. No.

Q. Okay. The next request, Document Number-4 -- request Number-4 regarding, "Documents that support or refute the contention that registrant did not retain intent to resume use of the mark American Muscle in the future."

MR. DINARDO: Counsel, I'm going to ask the same question here. Was a supplement provided before trial?

MR. SWYERS: A supplement was not provided. There were no such documents to produce.

BY-MR. DINARDO:

Q. Mr. Trillsch, to confirm your testimony, do you have any documents regarding your contention that registrant did not intend to resume use in the future?

A. No.

Q. Another request dealt with trademark searches conducted by or on behalf of Run It Consulting with regard to your American

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1
2 Muscle Sports Nutrition Company mark. Your
3 response was you do not retain the documents
4 of the trademark search. Based upon this
5 response, was there a trademark search that
6 was conducted?

7 A. Not sure. Like I said, I went
8 through Legalzoom.com and just followed their
9 online steps on -- you know, just filled out
10 the -- you know, whatever it was they were
11 asking online. I just filled it all out and
12 then hit submit, put my credit card number
13 in there and paid, you know, little over a
14 thousand dollars. And then the last thing
15 -- or the next thing I can recall getting
16 from LegalZoom back was the refusal.

17 Q. Okay. You received the refusal from
18 LegalZoom or from the trademark office?

19 A. From the trademark office.

20 Q. Okay. So once you filed the
21 application through LegalZoom, you didn't
22 really have anymore dealings with LegalZoom
23 after that?

24 A. No, sir.

25 Q. You had already trademarked your --

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(Whereupon, the phone cuts out.)

A. Repeat that again. I couldn't hear that last comment.

BY-MR.DINARDO:

Q. I'm sorry. After you filed your trademark application through LegalZoom, you did not have any further dealings with LegalZoom regarding that trademark application. Is that correct?

A. Yeah, not that I can recall.

Q. Okay. There's another document request about licenses, assignments, or other agreements regarding your American Muscle Sports Nutrition Company; and your response was you don't have -- there are no such agreements.

I just want to clarify. Is there an agreement between Run It Consulting and New York Nutrition Company?

A. Can you restate that question?

Q. Is there an agreement between Run It Consulting and New York Nutrition Company regarding the distribution of your American Muscle brand product?

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A. No. No, like hard copy, just verbal agreements. I own both companies.

Q. Okay. Is there an agreement between Run It Consulting and Cada Systems, Inc.?

A. Not Run It Consulting and Cada Systems, but there is an agreement between New York Nutrition Company and Cada Systems.

Q. Okay. Because New York Nutrition Company has the worldwide right to distribute?

A. That's correct. And so New York Nutrition Company is allowing Cada Systems to be the only distributor in India.

Q. And another request at or documents to identify petitioner's corporate structure, the corporate structure of Run It Consulting. Do you possess any of those documents -- those corporate formation documents or any of the annual reports?

A. Yes, I do.

Q. Your response was that you do not possess any documentation for this request.

A. I've got, you know, the corporation formation, obviously, tax ID and all that

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1 good stuff, if that's what you're referring
2 to?

3 Q. Yeah. I would like --

4 MR. DINARDO: Counsel, I would like
5 at least a copy, just for completeness, of
6 the formation document pursuant to this
7 request.

8 MR. SWYERS: They'll be provided,
9 provided that we get them, but the answer is
10 yes. I mean, it appears the witness clearly
11 says he has them, so yes.

12 MR. DINARDO: All right. Thank you.
13 And now if we could just take a 5 minute
14 break? I want to confirm that I'm done as
15 well.

16 MR. SWYERS: Sure thing. I -- are
17 we off the record, then? Off the record.

18 (Whereupon, a break is taken at
19 recess: 11:11 a.m. to 11:18 a.m.)

20 BY-MR.DINARDO:

21 Q. Back on record. I want to go back
22 briefly to your -- the search that you
23 conducted for American Muscle supplements
24 after receiving the rejected office action.
25

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I want to confirm that of all the searches you conducted, you didn't print out any of those results. Correct?

A. You mean like find products that are called American Muscle? No, I never found anything like that.

Q. No. I didn't ask you if you found anything. You conducted some searches on search engines like Google, Yahoo, and Bing. Correct?

A. Yes, that's correct.

Q. Did you print up any of those results from the search query that you submitted?

A. No, sir.

Q. Did you print up any of the web pages that you say you visited from this search result?

A. No, sir.

Q. Did you save any bookmarks or other links to any of those web pages?

A. No, sir.

Q. Did you make any notes about your searches?

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A. You know, just mental notes that I can't find anything on, you know, on this American Muscle mark.

Q. Did you make any --

(Whereupon, the phone cuts out.)

BY-MR.DINARDO:

Q. -- notes?

A. Could you repeat that? The phone was unclear.

Q. Did you make any handwritten notes about your search effort?

A. No, sir.

Q. Did you send any emails to anybody after completing your search effort?

A. No, sir.

Q. Did you speak to anybody else after completing your search effort?

A. Just my business partner.

Q. That would be Jason Duran?

A. Yes, that's correct.

Q. And what did you tell him?

A. Just basically, you know, hey -- you know, we were searching together -- just basically saying, look, you know, we can't

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1 find anything here. There's no -- you know,
2 there's nobody talking about this other
3 American Muscle company. There's, you know,
4 there's no nothing. We couldn't find
5 anything, to be honest.
6

7 Q. To your knowledge, did Jason Duran
8 have any notes about the search effort?

9 A. No, sir.

10 Q. To your knowledge, did Jason Duran
11 print up any of the search results?

12 A. No, sir, not to my knowledge.

13 Q. To your knowledge, did Jason Duran
14 save any bookmarks or links to any of those
15 search results or listings?

16 A. No, sir.

17 Q. Are you familiar with
18 Americanmusclesuppz, S-U-P-P-Z.com?

19 A. Americanmusclesuppz.com, not familiar
20 with the website.

21 Q. What about Americanmusclesupply.com?

22 A. American Muscle Supply, no, not the
23 website. I think there's a distributor
24 called American Muscle Supply. You know, we
25 pretty much sell to everybody. So I've

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heard pretty much every store name and every distributor that's out there. Not familiar with the websites, though, but I've heard of American Muscle Supply before.

MR. DINARDO: Okay. I believe we're done.

MR. SWYERS: You're done, Mr. Dinardo?

MR. DINARDO: Yes. No more questions for this witness.

MR. SWYERS: I have no further questions as well. We're off the record.

(Whereupon, the deposition concluded at 11:22 a.m.)

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REPORTER'S CERTIFICATE

ORAL DEPOSITION OF MARKUS TRILLSCH

March 7, 2013

STATE OF TEXAS

COUNTY OF TRAVIS

I, the undersigned Certified Shorthand Reporter in and for the State of Texas, certify that the facts stated in the foregoing pages are true and correct.

I further certify that I am neither attorney or counsel for, related to, nor employed by any parties to the action in which this testimony is taken and, further, that I am not a relative or employee of any counsel employed by the parties hereto or financially interested in the action.

SUBSCRIBED AND SWORN TO under my hand and seal of office on this the 14th day of March, 2013.

Autumn Smith

AUTUMN J. SMITH

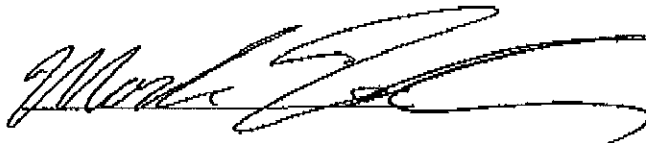
M, TRILLSCH

CERTIFICATE

STATE OF _____:

COUNTY/CITY OF _____:

Before me, this day, personally
 appeared, MARKUS TRILLSCH, who, being duly
 sworn, states that the foregoing transcript
 of his/her Deposition, taken in the matter,
 on the date, and at the time and place set
 out on the title page hereof, constitutes a
 true and accurate transcript of said
 Deposition.

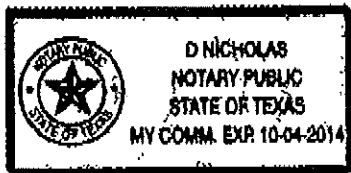


MARKUS TRILLSCH

SUBSCRIBED and SWORN to before me this
30 day of August, 2013 in the
 jurisdiction aforesaid.

10-04-2014 D. Nick

My Commission Expires Notary Public



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